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IN THE

Supreme Court of the United States

October Term, 1956

No. 248

RICHARD DOUGLAS FURNISH, M. D.,
Petitioner and Appellant,

vs.

THE BOARD OF MEDICAL EXAMINERS OF THE STATE OF CALIFORNIA,
Defendant and Respondent,

and

THE DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA IN AND FOR THE SECOND APPELLATE DISTRICT,
Respondent.

RESPONDENT'S OPPOSING BRIEF.

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THE BOARD OF MEDICAL EXAMINERS OF THE STATE OF CALIFORNIA,

Defendant and Respondent,

and

THE DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA IN AND FOR THE SECOND APPELLATE DISTRICT,

Respondent.

RESPONDENT'S OPPOSING BRIEF.

Statement of the Case and Statement of Facts.

On about July 21, 1954 an Accusation was filed with the Board of Medical Examiners of the State of California alleging that petitioner, Richard Douglas Furnish, M. D., had been guilty of unprofessional conduct contrary to the provisions of Section 2383 of the Business and Professions Code in that on or about May 4, 1953, in the United States District Court, he was ". . . convicted of felonies and criminal offenses involving moral turpitude, to wit: two counts of violation of Title 26 U. S. C. Section 145(b), in that he did wilfully and

knowingly attempt to defeat and evade a large part of the income tax owing by him to the United States of America for the calendar years 1947 and 1948, and each of said years" [Clk. Tr. pp. 39-40]. A hearing was held on February 11, 1955 before a Hearing Officer duly asssigned by said Board [Clk. Tr. p. 33] at which time the complainant offered and there was introduced a duly certified copy of the record of conviction in the case in the United States District Court for the Southern District of California, Central Division, entitled "United States of America vs. Richard Douglas Furnish (charged as Richard D. Furnish)", No. 22,754 Criminal, establishing that Richard Douglas Furnish, on May 4, 1953, was convicted, following his pleas of *nolo contendere*, of two counts of violation of 26 U. S. C. Section 145(b) (Income Tax Evasion) for the calendar years 1947 and 1948. [Clk. Tr. pp. 51-52.] At this administrative hearing, complainant conceded that it had not sustained the burden of proof to establish that the aforesaid convictions involved moral turpitude. [Clk. Tr. p. 60.]. Rather, complainant based its sought for disciplinary action on petitioner's *conviction of felonies* under Business and Professions Code Section 2383. [Clk. Tr. p. 67.]

Following said administrative hearing, the Hearing Officer in his Proposed Decision found that Dr. Furnish had been convicted of two felonies [Clk. Tr. p. 79] and proposed a one year suspension of his license but suspended the execution thereof and placed the doctor on three years' probation on specified terms and conditions. [Clk. Tr. pp. 79-80.] The Board of Medical Examiners decided not to adopt the Hearing Officer's Proposed Decision, notified the parties accordingly, and afforded to them an opportunity to file written argument with the

Board. [Clk. Tr. p. 77.] Following the filing of briefs [Clk. Tr. pp. 83-97], the Board itself decided the case and, after finding that Dr. Furnish had been convicted of two felonies as alleged in the Accusation [Clk. Tr. p. 101], thereafter suspended his license to practice medicine and surgery for a period of one year. [Clk. Tr. p. 101.]. Dr. Furnish's Petition for Rehearing [Clk. Tr. p. 104] was denied by the Board. [Clk. Tr. p. 112.]

Petitioner then sought a Writ of Mandate from the Los Angeles Superior Court to set aside the order of the Board setting the aforesaid suspension for one year. [Clk. Tr. pp. 1, 14.] The administrative record was incorporated in the Petitioner's First Amended Petition for Writ of Mandate. [Clk. Tr. p. 30.] The Board's Demurrer [Clk. Tr. p. 114] was sustained without leave to amend [Clk. Tr. p. 116] and an appeal [Clk. Tr. p. 119] was taken from the Judgment of Dismissal. [Clk. Tr. p. 117.]

On appeal the Judgment of the Superior Court was affirmed by the District Court of Appeal of the State of California, Second Appellate District, Division One, 149 A. C. A. 361, 308 P. 2d 924. A Petition for Rehearing was denied by said District Court of Appeal on April 9, 1957, and a subsequent application for said Court to grant a rehearing on its own motion also was denied on April 19, 1957. (150 A. C. A. 324, 309 P. 2d 493.) Thereafter a Petition for Hearing in the California Supreme Court was denied on May 15, 1957. (48 A. C. No. 12, Minutes p. 2.) The Petition for this Writ of Certiorari followed.

Issues.

Succinctly stated, respondent's major contentions are as follows:

1. Under the California Medical Practice Act (Bus. and Prof. Code, Sec. 2383), conviction of a felony, and conviction of a criminal offense involving moral turpitude each is an independent ground for disciplinary action.

2. Under the California Medical Practice Act (Bus. and Prof. Code, Sec. 2383), a conviction following a plea of *nolo contendere* made to a charge of felony expressly is deemed to be a conviction for disciplinary purposes.

3. No problem of *ex post facto* is herein involved since petitioner was disciplined for his two *felony convictions in the year 1953*, subsequent to the enactment of 1951 legislation which made such convictions grounds for disciplinary action.

4. The extent of the penalty within the Board's jurisdiction was for the Board to determine. Further, the penalty of a one year suspension was reasonable.

5. The California Board of Medical Examiners is vested with exclusive power and jurisdiction to discipline one of its licentiates for cause prescribed by law, and said Board cannot be divested of such jurisdiction by any voluntary declarations of a Trial Judge in a prior criminal proceeding.

ARGUMENT.

I.

There Is No Federal Question Herein Involved.

Conviction of a felony is an independent ground for disciplinary action under Section 2383 of the California Business and Professions Code. Said code section also expressly provides that a conviction following a plea of *nolo contendere* is a conviction for disciplinary purposes.

It is undisputed that petitioner, in the case entitled "The United States of America vs. Richard Douglas Furnish (charged as Richard D. Furnish)", No. 22754 Criminal, in the United States District Court for the Southern District of California, Central Division, was convicted, after pleas of *nolo contendere*, of two counts of felonies, to wit: violation of Title 26 U. S. C. Section 145(b) (Income Tax Evasion).

The accusation against petitioner, Richard Douglas Furnish, M. D., in paragraph III thereof, charged:

> "That the respondent has been guilty of unprofessional conduct contrary to the provisions of Section 2383 of the Business and Professions Code of the State of California, as follows:
>
> "That on or about May 4, 1953, in a proceeding then pending in the United States District Court for the Southern District of California, Central Division, entitled 'United States of America vs. Richard Douglas Furnish (charged as Richard D. Furnish)', No. 22,754 Criminal, the respondent was convicted of felonies and criminal offenses involving moral turpitude, to wit: two counts of violation of Title 26 U.S.C. Section 145(b), in that he did wilfully and knowingly attempt to defeat and evade a large

part of the income tax owing by him to the United States of America for the calendar years 1947 and 1948, and each of said years." [Clk. Tr. p. 40.]

At the administrative hearing on February 11, 1955 the complainant made it clear that the Board of Medical Examiners was not seeking to discipline Dr. Furnish for the conviction of a criminal offense or offenses involving moral turpitude. Indeed, the complainant frankly conceded that it had not sustained the burden of proof on the issue of moral turpitude. [Clk. Tr. p. 66.] However, the complainant unquestionably proved convictions of felonies which, pursuant to Business and Professions Code Section 2383, are independent grounds for disciplinary action.

Pursuant to Section 2383 of the Business and Professions Code, conviction of a felony *or* offense involving moral turpitude constitutes unprofessional conduct. The use of the disjunctive in such section makes it clear that these are separate and alternative grounds for disciplinary action. Further, for purposes of Section 2383, the record of conviction is conclusive evidence of such unprofessional conduct and a conviction following a plea of *nolo contendere* is deemed to be a conviction for disciplinary purposes. Also holding that within the meaning of Business and Professions Code Section 2383 the record of conviction is conclusive evidence of unprofessional conduct is the recent case of *Lorenz v. Board of Medical Examiners*, 46 Cal. 2d 684, 686, 298 P. 2d 537.

Specifically, Business and Professions Code Section 2383 reads as follows:

"The conviction of a felony, or of any offense involving moral turpitude, constitutes unprofessional conduct within the meaning of this chapter. The

record of the conviction is conclusive evidence of such unprofessional conduct. A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge of a felony or of any offense involving moral turpitude is deemed to be a conviction within the meaning of this section. The board may order the license suspended or revoked, or may decline to issue a license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment. [Amended by Stats. 1951 ch. 792 § 1.]"

Petitioner contends that under Business and Professions Code Section 2383 conviction of a felony not involving moral turpitude, based on a plea of *nolo contendere*, does not constitute grounds for disciplinary action. (Pet. for Writ. of Cert. p. 13.) This contention, requiring moral turpitude for a felony, renders meaningless the language actually used in said section. It is clear that the language of said Section 2383, to wit: "made to a charge of a felony or of any offense involving moral turpitude is deemed to be a conviction within the meaning of this section" applies equally to a plea or verdict of guilty as well as a conviction following a plea of *nolo contendere*. The first sentence of Section 2383 makes it clear that the conviction of a felony *or* of any offense involving moral turpitude are alternative grounds of unprofessional conduct. Each is an independent basis

for disciplinary action. The third sentence of Section 2383 merely defines what constitutes a conviction, namely a plea or verdict of guilty or a conviction following a plea of *nolo contendere;* but said sentence in no manner changes the alternative grounds of unprofessional conduct to wit: conviction of a felony, or of any offense involving moral turpitude. If a conviction under Section 2383 requires moral turpitude in connection with every plea of guilty, verdict of guilty, or conviction following a plea of *nolo contendere*, only the phrase "any offense involving moral turpitude" would have been necessary for such term would necessarily include felonies. However, the language "made to a charge of a felony" also was used in the third sentence of Section 2383 and meaning must be attributed to it. The only meaning which can be attributed is that a conviction following a plea of *nolo contendere* made to a charge of a felony, is a conviction within the meaning of Business and Professions Code Section 2383, whether such felony does or does not involve moral turpitude.

Moreover, there can be no doubt but that Title 26, U. S. C. Section 145(b) (1939 Code) is a felony section. That section provides:

> "Any person required under this title to collect, account for, and pay over any tax imposed by this title, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution."

For disciplinary purposes, it has been established that it is the law of the jurisdiction where the crime was committed which determines the character of an offense as a felony or a misdemeanor, and that where the ground for disciplinary action is based on a conviction of a crime it includes crimes denounced by the Federal statutes as well as under California statutes.

Caminetti v. Imperial Mutual Life Insurance Co., 59 Cal. App. 2d 476, 489-490, 139 P. 2d 681;

See also:

People v. Theodore, 121 Cal. App. 2d 17, 29-30, 262 P. 2d 630;

Karrell v. Watson, 116 Cal. App. 2d 769, 771, 774, 254 P. 2d 651, where a real estate broker's license was revoked for conviction of Sections 697 and 715 of Title 38 U. S. C.;

In re Hallinan, 43 Cal. 2d 243, 250, 253, 272 P. 2d 768, discussing disciplinary action against an attorney for violation of 26 U. S. C. Sec. 145 sub. (b);

Murrill v. State Bd. of Accountancy, 97 Cal. App. 2d 709, 710, 712, 218 P. 2d 569, disciplining an accountant for violation of Section 145(a) of Title 26 U. S. C.

Moreover, it has been uniformly held that under federal law it is not the actual punishment imposed but that which the statute authorizes which determines whether the crime is a felony or misdemeanor.

Cartwright v. United States, 146 F. 2d 133, 135;

See also:

In re Minner, 3 P. 2d 473, 474 (Supreme Court of Kansas).

In the instant case, the duly certified record of conviction in the case entitled "United States of America vs. Richard Douglas Furnish (charged as Richard D. Furnish)", United States District Court for the Southern District of California, Central Division, No. 22,754 Criminal, was introduced in evidence. Such record of conviction, pursuant to Business and Professions Code Section 2383, was conclusive evidence of unprofessional conduct in that Dr. Furnish was convicted of felonies, to wit: two counts of violation of Title 26 U. S. C. Section 145(b). Hence, the conclusion is inescapable that there was ample evidentiary support for Finding No. III, to wit:

> "That on or about May 4, 1953, in a proceeding then pending in the United States District Court for the Southern District of California, Central Division, entitled 'United States of America vs. Richard Douglas Furnish (charged as Richard D. Furnish)', No. 22,754 Criminal, the respondent was convicted upon his plea of nolo contendere of two felonies, being two counts of violation of Title 26 U.S.C. Section 145(b), charging that he did wilfully and knowingly attempt to defeat and evade a large part of the income tax owing by him to the United States of America for the calendar years 1947 and 1948, and each of said years." [Clk. Tr. p. 101]

and Determination of Issues, No. I, namely:

> "That respondent has been convicted of two felonies, thereby subjecting his license and certificate to disciplinary action by virtue of the provisions of Section 2383 of the Business and Professions Code of the State of California," [Clk. Tr. p. 101]

set forth in the November 10, 1955 Decision of the Board of Medical Examiners.

For the foregoing reasons it is respectfully submitted that the trial court herein correctly sustained respondent's demurrer without leave to amend based upon Petitioner's failure to state a cause of action.

II.

No Problem of Ex Post Facto Legislation Is Herein Involved.

The Petitioner was disciplined for conviction of felonies and these convictions occurred after Business and Professions Code Section 2383 made such convictions grounds for disciplinary action. Respondent submits that no problem of *ex post facto* legislation is herein presented for the reasons hereinafter set forth.

1. The disciplinary action against petitioner was not based upon substantive acts which occurred in the years 1947 and 1948. The disciplinary action against petitioner was predicated solely and exclusively on his *two felony convictions in the year 1953.*

It is clear that the petitioner was convicted of two counts of felonies (violation of Title 26 U. S. C. Section 145(b)) on May. 4, 1953. [Clk., Tr. pp. 51-52.]

Section 2383 of the Business and Professions Code was adopted in the year 1951 by Statutes 1951, Chapter 792, Section 1. Petitioner's convictions of felonies, and his *nolo contendere* pleas in 1953, each occurred subsequent to the 1951 amendment of Business and Professions Code Section 2383. When petitioner entered his *nolo contendere* pleas and was convicted of two counts of felonies, the law at such time, and since 1951, made convictions of felonies grounds for disciplinary action and the law also expressly provided that a conviction following a plea of *nolo contendere* made to a charge of a felony was deemed to be a conviction for disciplinary purposes.

The offenses committed by the licensee are not directly involved. It is the judgment of conviction by reason of those acts which is the basis for disciplinary action herein.

Karrell v. Watson, 116 Cal. App. 2d 769, 774, 254 P. 2d 651.

2. It has been held that under both the State and United States Constitution the phrase *ex post facto* is not applicable to civil laws. (*Murrill v. State Board of Accountancy*, 97 Cal. App. 2d 709, 711; 218 P. 2d 569 and cases therein cited.)

3. The right of a medical doctor to practice his profession is a property right. Such right is a qualified one, and is held in subordination to the duty of the State under the police power to protect the public health.

Hawker v. New York, 170 U. S. 189, 18 S. Ct. 573, 42 L. Ed. 1002;

Lawrence v. Bd. of Registration, 239 Mass. 424, 132 N. E. 174, 176.

In *Butcher v. Maybury*, 8 F. 2d 155, at 158, the court quotes from a note found on page 1273 of 8 L.R.A. (N. S.) as follows:

> "'The granting of a license in such cases is merely the means taken by the state, in the exercise of its police power, to regulate and restrict the engaging in certain professions and occupations for the public good, and confers no rights whatever, in the way of a contract with the state, upon the licensee. He takes the same subject to the right of the state, at any time that the public good demands, to make further restrictions and regulations thereto; and, if such restrictions and regulations are reasonable, they will be upheld, even though they may actually prohibit

some people from further engaging in such occupations or professions under a license previously granted.' "

In accord:

State v. Hozorka, 100 Minn. 249, 252, 110 N. W. 870, 871, 8 L. R. A. (N. S.) 1273, 1275 (10 Ann. Cas. 398);

Rosenblatt v. Cal. St. Bd. of Pharmacy, 69 Cal. App. 2d 69, 73-74, 158 P. 2d 199.

Indeed, the courts have held that the legislature may prescribe qualifications, both as to character and learning, which will require those in practice to give up their occupation.

Dent v. West Virginia, 129 U. S. 114, 122, 9 S. Ct. 231, 32 L. Ed. 634;

Hawker v. New York, 170 U. S. 189, 18 S. Ct. 573, 42 L. Ed. 1002;

Rosenblatt v. Cal. St. Bd. of Pharmacy, 69 Cal. App. 2d 69, 73-75, 158 P. 2d 199.

Legislation prescribing qualifications which a practitioner cannot meet because of conditions or acts antedating the enactment of the particular legislation is valid. Such legislation does not constitute punishment; it is legitimate regulation.

Hawker v. New York, 170 U. S. 189, *supra*;

Murrill v. State Bd. of Accountancy, 97 Cal. App. 2d 709, 711, 218 P. 2d 569;

Meffert v. State Board of Medical Registration, 66 Kan. 710, 72 Pac. 247, 1 L. R. A. (N. S.) 811.

The only limitation on the above doctrines is the principle that the regulations must be reasonable and must

bear some relation to the service to be rendered by the licensee.

In *Hawker v. New York, supra*, the appellant was tried and convicted in New York of the crime of abortion in 1878. In 1893 the legislature of the State of New York passed a statute which prohibited anyone to practice medicine after he had been convicted of a felony. The single question presented in *Hawker v. New York* was whether the statute prohibiting one who had been convicted of a felony to practice medicine, and making it a misdemeanor if he should do so, was an *ex post facto* law in contravention of Article I, Section 10, of the Constitution of the United States. In holding that the statute was not an *ex post facto* law and not unconstitutional, the Supreme Court stated that the police power of the state entitled the state to enact legislation which defined the qualifications of those who attempted to practice medicine, and that such legislation is a proper exercise of the police power. The Court then stated, at page 196:

> *"That the form in which this legislation is cast suggests the idea of the imposition of an additional punishment for past offenses is not conclusive. We must look at the substance, and not the form, and the statute should be regarded as though it in terms declared that one who had violated the criminal laws of the state should be deemed of such bad character as to be unfit to practice medicine, and that the record of a trial and conviction should be conclusive evidence of such violation.* All that is embraced in these propositions is condensed into the single clause of the statute, and it means that, and nothing more. *The state is not seeking to further punish a criminal, but only to protect its citizens from physicians of bad character. The vital matter is not the conviction,*

but the violation of law. The former is merely the prescribed evidence of the latter. . . ." (Emphasis added.)

4. Finally, respondent rsepectfully points out that even during the years 1948 and 1949, when Petitioner committed the substantive acts, the expressed California Legislative policy made conviction of a felony, in and of itself and without regard to whether moral turpitude was involved, grounds for disciplining a licensed California doctor. Specifically, Section 2383 of the California Business and Professions Code read as follows:

> "The conviction of a felony or of any offense involving moral turpitude constitutes unprofessional conduct within the meaning of this chapter. The record of the conviction is conclusive evidence of such unprofessional conduct." (Added by Cal. Stats. 1937, Ch. 414, p. 1377, making effective Stats. 1937, Ch. 399, p. 1275.)

III.

The Extent of the Penalty Is for the Administrative Agency to Determine.

Once it is settled that grounds for disciplinary action exist, it is well settled that the extent of the penalty within the area of the Board's discretion is for the Board to determine.

2 Cal. Jur. 2d, Administrative Law, p. 393;

Fuller v. Board of Medical Examiners, 14 Cal. App. 2d 734, 737-738, 59 P. 2d 171;

King v. Board of Medical Examiners, 65 Cal. App. 2d 644, 652, 151 P. 2d 282;

Painless Parker v. Board of Dental Examiners, 216 Cal. 285, 300, 14 P. 2d 67;

Black v. State Personnel Board, 136 Cal. App. 2d 904, 912, 289 P. 2d 863;

Schneider v. Civil Service Com., 137 Cal. App. 2d 277, 285, 290 P. 2d 306;

Newman v. Board of Civil Service Com., 140 Cal. App. 2d 907, 912, 296 P. 2d 41;

Olson v. Watson, 143 Cal. App. 2d 343, 351, 300 P. 2d 35.

In the instant case, the Board of Medical Examiners suspended petitioner's license as a physician and surgeon for a period of one year.

There is no question but that the penalty of a one year suspension was within the jurisdiction of the Board. Indeed, the Board by law was authorized to have imposed a penalty of revocation. (Bus. and Prof. Code, Sec. 2372.) Specifically, Business and Professions Code Section 2372 reads as follows:

> "The board shall discipline the holder of any certificate, whose default has been entered or who has been heard by the board and found guilty, by any of the following methods:
>
> (a) Suspending judgment.
>
> (b) Placing him upon probation.
>
> (c) Suspending his right to practice for a period not exceeding one year.
>
> (d) Revoking his certificate.
>
> (e) Taking such other action in relation to disciplining him as the board in its discretion may deem proper."

However, the Board did not impose the extreme penalty. The Board exercised its discretion and fixed a lesser penalty, to wit: the one year suspension.

That the penalty of a one year suspension by the Board is not excessive is demonstrated by the Judgment of the United States District Court for the Southern District of California, Central Division, in the case entitled "United States of America vs. Richard Douglas Furnish", Criminal No. 22,754, wherein the Court imposed a fine of $5,000 on each of two counts (a total fine of $10,000) of conviction of violation of Title 26 U. S./C. Section 145(b), namely, income tax evasion. [Clk. Tr. p. 51.]

Respondent respectfully points out that the instant case is not one where the evidence does not suffice to support one or more grounds for disciplinary action. The significance of this fact is indicated by the following language from *Black v. State Personnel Board,* 136 Cal. App. 2d 904, 912, 289 P. 2d 863, 867:

> "This case does not fall within the ambit of Cooper v. State Board of Medical Examiners, 35 Cal. 2d 242, 252 [217 P. 2d 630, 18 A.L.R. 2d 593], and Nelson v. Department of Corrections, supra, 110 Cal. App. 2d 335, cases in which the court, having found one charge unsupported, remitted the matter to the administrative agency for the purpose of reconsidering the amount of the penalty. . . ."

IV.

The California State Board of Medical Examiners Has Exclusive Jurisdiction to Discipline Its Licentiates.

By law, the California State Board of Medical Examiners is vested with exclusive power to discipline its licentiates for the causes prescribed by law. (Cal. Bus. and Prof. Code, Secs. 2360 and 2361.) It is respectfully submitted that said Board cannot be divested of its jurisdiction and power to discipline because of the voluntary declarations of a Trial Judge in a criminal proceeding to

which the California Board of Medical Examiners was not a party.

It is well settled that the regulatory power of the State properly may be committed to an administrative board.

Douglas v. Noble, 261 U. S. 165, 170, 43 S. Ct. 303, 67 L. Ed. 590;

State v. State Medical Board, 32 Minn. 324, 20 N. W. 238, 50 Am. Rep. 575, 577.

Implicit in the Trial Judge's statement, to wit:

> "I think on a plea of nolo contendere they do not consider it—at least the Medical Board does not consider that as a ground for revoking his license, and unless they have professional grounds his license should not be revoked for this particular offense. . . ." [Clk. Tr. p. 63.]

is the Judge's recognition that the power to discipline is exclusively vested in the State Medical Board.

Petitioner's medical license was not before the Trial Judge in the criminal proceeding and said Judge purported to make no finding or ruling with respect thereto for the reason that such matter was not within his jurisdiction.

It is to be noted that the Trial Judge's remarks, gratuitous as they were, only professed his belief that the California Medical Board would not *revoke* Petitioner's license, and the Board did not revoke but rather suspended such license for one year.

Further, despite the Trial Judge's remarks about Petitioner's license, it is apparent that the Trial Judge considered Petitioner's conduct serious enough to warrant convicting petitioner on two felony counts and fining him a total of $10,000.

The California Legislature having made conviction of a felony grounds for disciplinary action against a licensed physician and surgeon, and further having specifically designated a conviction following a plea of *nolo contendere* as a conviction for disciplinary purposes, it is respectfully submitted that Respondent Board properly suspended for a period of one year the license of Petitioner herein.

Conclusion.

Respondent respectfully submits that the Petitioner herein has failed to present a substantial federal question as would require this Honorable Court to exercise its jurisdiction within the meaning of *Zucht v. King*, 260 U. S. 174, 176, 43 S. Ct. 24, 67 L. Ed. 194. Upon the record and for the reasons hereinabove stated, respondent requests that the writ prayed for herein be denied.

Respectfully submitted,

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